

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

KEVIN L. KEITHLEY, *et al.*,

No. C 03-4447 SI

Plaintiffs,

**ORDER GRANTING DEFENDANTS'
MOTION FOR LEAVE TO FILE
AMENDED FINAL INVALIDITY
CONTENTIONS**

v.

THE HOMESTORE.COM, INC., *et al.*,

Defendants.

Defendants have moved to amend their final invalidity contentions to include materials related to a prior art system known as Prodigy. Plaintiffs oppose the motion and assert that defendants have not been diligent in discovering information about the Prodigy system.

The Court finds that defendants have demonstrated good cause for amending the final invalidity contentions. Defendants have submitted declarations stating that Prodigy no longer exists as it did during the relevant time periods, and that it was difficult to locate information about Prodigy from knowledgeable individuals. *See generally* Pleune Decl.; Reply Pleune Decl. Once defendants obtained information describing the functionality and other aspects of the Prodigy system in February 2008, defendants promptly provided that information to plaintiffs.


The Court also finds that plaintiffs will not be prejudiced by the amendment, as they have been on notice since as early as February 2006 that defendants relied on the Prodigy system as invalidating prior art. Defendants have included Prodigy in every iteration of their invalidity contentions since February 2006, and thus this is unlike the situation where a party seeks to add an entirely new invalidity theory. In addition, the parties have not filed dispositive motions. Finally, the Court notes that plaintiffs have also recently amended their final infringement contentions, and that this factor also weighs in favor

1 of allowing the amendment.

2 Accordingly, the Court GRANTS defendants' motion for leave to amend final invalidity
3 contentions. (Docket No. 430).

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5 **IT IS SO ORDERED.**

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7 Dated: June 20, 2008



SUSAN ILLSTON
United States District Judge